Supreme Court, U. S.
FILED
APR 24 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977
No. 77-1353

OWENDALE-GAGETOWN SCHOOL DISTRICT,
Petitioner,

-v-

STATE BOARD OF EDUCATION,
Respondent,

KEITH GOSLIN, et al,
Respondents.

BRIEF OF RESPONDENTS, KEITH GOSLIN, et al, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BARLEY & KLEEB, P.C.

Robert E. Kleeb, Esq.

Attorneys for Respondents,
Keith Goslin, et al.

Business Address:

213 E. Grand River Avenue
Howell, Michigan 48843
(517) 546-7363

PRINTED BY SPEAKER-HINES AND THOMAS., INC., LANSING, MICHIGAN—1978

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	1
Question Presented	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	2
Argument	
THE DECISION BY THE MICHIGAN SUPREME COURT, CONSTRUING A MICHIGAN STATUTE DEALING WITH TRANSFERS OF PROPERTY BETWEEN SCHOOL DISTRICTS AS NOT REQUIRING A VOTE OF THE PEOPLE TO EFFECTUATE THE INSTANT TRANSFER, DOES NOT INVOLVE A FEDERAL QUESTION OF SUBSTANCE WHICH THIS COURT SHOULD REVIEW	3
Conclusion and Relief	6

TABLE OF CITATIONS

CASES

	Page
Akron Board of Education v. State Board of Education of Ohio, 490 F.2d 1285, (6th Cir 1974), cert. denied, 417 U.S. 932 (1974)	5
New York v. New Jersey, 262 U.S., 192	4
Pawhuska v. Pawhuska Oil Company, 250 U.S. 394	4
Railway Commission v. Los Angeles, R.y. Corp., 280 U.S. 145, 156	4
Risty v. Chicago R.I. & Ry Company, 270 U.S. 378, 390	4
Tileston v. Ullman, 318 U.S. 44 (1943)	4
Trention v. New Jersey, 262 U.S. 182	4
Triplett v. Tieman, 302F. Supp. 1239 (1142); D, Neb. (1969)	5
Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 40, 47 (1933)	3, 4
Worcester v. Worcester Consolidated Street Railway Company, 196 U.S. 539	4

MICHIGAN PUBLIC ACTS

1955 PA 269, § 461, MCLA 340.461; MSA 15.3461	4, 6
1970 MCL, § 24.301; MSA Sec. 3.560 (201)	4
1976 PA 451, § 951, MCLA 380.951; MSA 15.4951	3, 6

MISCELLANEOUS

Supreme Court Rule 19 1. (a)	6

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977
No. 77-1353

OWENDALE-GAGETOWN SCHOOL DISTRICT,
Petitioner,

-v-

STATE BOARD OF EDUCATION,
Respondent,

KEITH GOSLIN, et al,
Respondents.

BRIEF OF RESPONDENTS, KEITH GOSLIN, et al, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Respondents, KEITH GOSLIN, et al, accepts Petitioner's statement of the opinions below.

JURISDICTION

Respondents, KEITH GOSLIN, et al, accepts Petitioner's statement of jurisdiction.

QUESTION PRESENTED

Whether the Michigan Supreme Court in its Order denying Petition for Rehearing removed any Federal question by its interpretation of the Michigan Statute?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1955 PA 269, § 461, MCLA 340.461; MSA 15.3461:(1)

"An intermediate school board may detach territory from 1 school district and attach the territory to another if requested to do so by resolution of the board of a school district whose boundaries would be changed by the action, or if petitioned by not less than 2/3 of the persons who own and reside on the land to be transferred. The intermediate school board shall take final action within 60 days after the receipt of the resolution or petition. The territory shall be contiguous to the school district to which it is attached. If the latest assessed valuation of the area to be detached is more than 10% of the latest assessed valuation of the entire school district from which it is to be detached, the action of the intermediate school board shall not be effective unless approved by an affirmative vote of a majority of the school electors of the district from which the territory is to be detached."

STATEMENT OF THE CASE

The statement as set forth in Petitioner's Brief is adopted by Keith Goslin, et al, with the exception of the last paragraph of page 7 of Petitioner's Brief. It is correct that on October 5, 1977, the Petitioner filed its Petition for Rehearing with the Michigan Supreme Court. The Court treated that Petition as a Motion for Reconsideration which is permissible pursuant to the Michigan Court Rules. Petitioner is incorrect when it states that the issue of statuory interpretation concerning 10% was never raised before the Courts. Petitioner at all levels of the appellate proceedure has argued that in determining

whether or not the Goslin Parcel exceeded 10% of School District's state equalized valuation, all prior transfers since the School District's inception must be included in the computation of the 10%. The Michigan Supreme Court concluded otherwise and held that the value of the District is the valuation of the District as constituted at the time each transfer request is heard before the State Board of Education, see Petitioners' Brief, Appendix A-1. In its memorandum opinion, the Michigan Supreme Court made a constitutional interpretation of the 10% provision of Michigan Compiled Law, Sec. 380.951.

ARGUMENT

THE DECISION BY THE MICHIGAN SUPREME COURT, CONSTRUING A MICHIGAN STATUTE DEALING WITH TRANSFERS OF PROPERTY BETWEEN SCHOOL DISTRICTS AS NOT REQUIRING A VOTE OF THE PEOPLE TO EFFECTUATE THE INSTANT TRANSFER, DOES NOT INVOLVE A FEDERAL QUESTION OF SUBSTANCE WHICH THIS COURT SHOULD REVIEW.

Keith Goslin et al, Respondents, have steadfastly maintained that pending a statutory interpretation of Michigan Compiled Laws, Sec. 380.951, by the Supreme Court of the State of Michigan, if there were any person or persons entitled to have the transfer placed upon the ballot for the general public, they must be persons within the meaning of the Michigan and Federal Constitutions. The Petitioner School District is not a person within the scope of the Fourteenth Amendment of the United States Constitution. In *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 40, 47 (1933), the Court speaking through Mr. Justice Cardozo, at pg. 40, says,

"There is error in the holding of the Circuit Court of Appeals that the statute of Maryland creating this exemp-

tion is a denial to the Respondent of equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States. A Municipal Corporation, created by a State for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may evoke in opposition to the will of its creator."

Mr. Justice Cardozo then cited in support thereof, *Trention v. New Jersey*, 262, U.S. 182; *New York v. New Jersey*, 262 U.S., 192; *Worcester v. Worcester Consolidated Street Railway Company*, 196 U.S. 539; *Pawhuska v. Pawhuska Oil Company*, 250 U.S. 394; *Risty v. Chicago R.I. & Ry Company*, 270 U.S. 378, 390; *Railway Commission v. Los Angeles, R.y. Corp.*, 280 U.S. 145, 156.

It has never been argued and for purposes of this Petition, is conceded that the Petitioner had the right to file an appeal of the State Boards' determinations in the Circuit Court for Ingham County, the Michigan Court of Appeals, and seeking leave to appeal to the Michigan Supreme Court. This right is created by the Administrative Procedures Act of the State of Michigan, 1970 Michigan Compiled Laws, Sec. 24.301, (MSA Sec. 3.560 (201)).

Petitioner claims the limitation of 1955 PA 269 Sec. 461, supra, that only contiguous property may be transferred to another school district, is violative of the Fourteenth Amendment. Petitioner lacks standing to raise this constitutional claim either on its own behalf or on behalf of some of its residents. *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36 (1933); *Tileston v. Ullman*, 318 U.S. 44 (1943).

The Michigan Court of Appeals acknowledged that school district residents had such a right when it said,

"It should be noted that a citizens group appeared in the case at the Circuit Court level, in opposition to the transfer, and then elected not to participate further in this litigation."

See Petitioner's Appendix A-7, A-8, footnote 4. Thus, the residents of the Petitioner School District elected not to press their alleged constitutional rights herein.

A further discussion of the question of equal protection was made by the Federal District Court of Nebraska, Here the Court in a suit between a school district and the State Board of Education in *Triplett v. Tieman*, 302F. Supp. 1239 (1142); D, Neb. (1969), held at page 1242,

"The Plaintiff's school district are legally not subject to injury under the equal protection clause. The equal protection clause of the Fourteenth Amendment has no obligation to the acts of a State against its own political subdivisions."

Petitioner relies heavily upon *Akron Board of Education v. State Board of Education of Ohio*, 490 F.2d 1285, (6th Cir 1974), cert. denied, 417 U.S. 932 (1974) (hereinafter referred to as Akron Board of Education). In the Akron Board of Education suit, the Supreme Court in denying certiorari, upheld the lower Court's relief that while the school board was not a person under the equal protection clause of the Fourteenth Amendment, the school Superintendent was. This is ascertained from the entitlement of the Petition for Certiorari which includes as Plaintiffs Appellant, one Conrad C. Ott, Akron School Superintendent. Petitioner herein did not include its Superintendent of schools at any stage of the proceedings.

For purposes of argument, it is conceded that the Michigan Court of Appeals in reversing the Ingham County Circuit Court, made the reversal on the basis that Petitioner was not

a proper party to raise the question. The Supreme Court of Michigan, in its original Order denying application for leave to appeal, A-3 of Petitioner's Brief, made no attempt at statutory interpretation. However, in its Order denying Petition for Rehearing, see Respondents' Brief, Appendix A-1, the Michigan Supreme Court interpreted the Michigan Statute Mich. Com. M.C.L.A. 340.461; M.S.A. 15.3461. In doing so, it specifically referred to and interpreted the 10% provision of said statute in its opinion. (See Respondents' Appendix A-1.) In doing so, the Michigan Supreme Court resolved the initial issue raised in the Ingham County Circuit Court by Petitioner against the Petitioner. Further, the Michigan Supreme Court in that decision, acknowledged the right of Petitioner School District to appeal, thus precluding Petitioner from claiming any violation of equal protection, should such exist.

There exists at the present time, no Federal question to which this Court should address itself and therefore, Petitioner's writ for certiorari should be denied with costs awarded to your Respondent.

CONCLUSION AND RELIEF

Petitioner sought and obtained below a ruling of its State statutory claim. Petitioner has failed to raise any Federal question of substance as contemplated by Supreme Court Rule 19 1. (a). Thus, for the foregoing reasons, the Petition for a Writ of Certiorari should be denied by this Court.

Respectfully Submitted,

BARLEY & KLEEB, P.C.

Robert E. Kleeb, Esq.
Attorneys for Keith Goslin, et al.
213 E. Grand River Avenue
Howell, Michigan 48843